

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

SCOTTY TYRONE SIMMONS,

Plaintiff,

v.

CIVIL ACTION NO. 1:15-14315

B.J. JOHNSON, Warden,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Eifert submitted to the court her Findings and Recommendation on April 1, 2016, in which she recommended that the district court grant plaintiff's motion to withdraw his petition under 28 U.S.C. § 2241 for a writ of habeas corpus, (Doc. No. 17); grant plaintiff's motion to withdraw his petition under 28 U.S.C. § 2241 for a writ of habeas corpus to the extent that he seeks recharacterization of his § 2241 petition and the proposed § 2255 motion, (Doc. No. 19); transfer this action, including the § 2241 petition and the proposed § 2255 motion, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. § 1631; and remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Eifert's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Eifert, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** plaintiff's motion to withdraw his petition under 28 U.S.C. § 2241 for a writ of habeas corpus, (Doc. No. 17); **GRANTS** plaintiff's motion to withdraw his petition under 28 U.S.C. § 2241 for a writ of habeas corpus to the extent that he seeks recharacterization of his § 2241 petition and the proposed § 2255 motion, (Doc. No. 19); **TRANSFERS** this action, including the § 2241 petition and the proposed § 2255 motion, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. § 1631; and directs the Clerk to dismiss this case from the court's active docket.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

**IT IS SO ORDERED** this 27th day of April, 2016.

ENTER:

David A. Faber

David A. Faber  
Senior United States District Judge